

District Lodge 160, International Association of Machinists and Aerospace Workers, AFL-CIO, and its affiliated Local Lodge 1028 (Gray Motors, Inc.) and Robert C. Ferguson. Case 19-CB-3982

December 16, 1982

DECISION AND ORDER

**BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND ZIMMERMAN**

Upon a charge duly filed by Robert C. Ferguson, the Regional Director for Region 19 of the National Labor Relations Board, acting on behalf of the General Counsel of the Board, issued a complaint alleging that Respondent District Lodge 160, International Association of Machinists and Aerospace Workers, AFL-CIO, and its affiliated Local Lodge 1028 violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended.¹ Respondent filed an answer to the complaint in which it admitted certain allegations of the complaint and denied others, including all those charging it with the commission of any unfair labor practices.²

On June 27, 1981, the General Counsel, the Charging Party, and Respondent entered into a stipulation in which they agreed to certain facts relevant to the issues in this proceeding. They also agreed to waive a hearing before an administrative law judge, the issuance of an administrative law judge's decision, and the presentation of any evidence other than that contained in the stipulation and the exhibits there referred to. By order dated October 26, 1982, the Board approved the stipulation and transferred the proceeding to the Board. Thereafter, the General Counsel filed a brief with the Board.³

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case, including the brief that was submitted by the General Counsel, and makes the following:

¹ The parties stipulated that District Lodge 160 is an umbrella organization for five western Washington local lodges, including Local Lodge 1028. As such, District Lodge 160 is composed of the five local lodges and provides all five with a common full-time paid staff and office in Tacoma, from which administrative services for all five local lodges are handled. The parties stipulated that District Lodge 160 and Local Lodge 1028 in effect constitute a single labor organization.

² The complaint and notice of hearing was issued on February 25, 1981. Respondent filed its answer to the complaint on March 9, 1981.

³ Although provided an opportunity to file briefs in support of their respective positions, it should be noted that neither the Charging Party nor Respondent chose to do so.

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Gray Motors, Inc., the employer of the Charging Party, has been at all times material herein a Washington corporation, with an office and place of business in Port Angeles, Washington, where it is engaged in the business of selling and servicing motor vehicles. During the past 12 months, which period is representative of all times material herein, in the course and conduct of its business operations, Gray Motors, Inc., herein called the Employer, had gross sales of goods and services valued in excess of \$500,000. During the past 12 months, the Employer, in the course and conduct of its business operations, purchased and caused to be transferred and delivered to its facilities within the State of Washington goods and materials valued in excess of \$50,000 directly from sources outside said State or from suppliers within said State which in turn obtained such goods and materials directly from sources outside said State. Accordingly, we find, in agreement with the parties, that Gray Motors, Inc., has been at all times material herein an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction in this proceeding.

II. THE LABOR ORGANIZATION

The parties stipulated and we find that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

At all times relevant, Respondent has been the bargaining representative of employees of the Employer and Robert Ferguson has been an employee of the Employer. At all times relevant, the International constitution of the International Association of Machinists and Aerospace Workers, AFL-CIO, contained the following language set forth as article I, section 3:

IMPROPER CONDUCT OF A MEMBER

The following actions or omissions shall constitute misconduct by a member . . . Accepting employment in any capacity in an establishment where a strike or lockout exists as recognized under this Constitution, without permission. Resignation shall not relieve a member of his obligation to refrain from accepting employment at the establishment for the duration of the strike or lockout if the res-

ignation occurs during the period of the strike or lockout or within 14 days preceding its commencement.

On or about May 6, 1980,⁴ at a regular union meeting of Local Lodge 1028 at which Ferguson was present, copies of a flyer containing the language set forth above were handed to members who were present. On or about June 3, at a regular meeting of Local Lodge 1028 at which Ferguson was present, a strike vote against the Employer and certain other automobile dealers in Port Angeles was taken and passed. The constitutional provision set forth above was communicated to those present, including Ferguson, at the June 3 meeting. On or about June 11 or 12, a strike commenced against the Employer and other employers. On or about June 12, Ferguson wrote to Respondent resigning his union membership and this letter was received by Respondent on June 13. On or about June 13, Ferguson returned to work at the Employer's facility and thereafter continued to work there for the balance of the strike. On or about September 26, Ferguson was served with notice of a disciplinary hearing or trial to be conducted by Respondent upon charges brought against him as a result of his working at the Employer's facility during the strike. This hearing was held pursuant to notice on October 8, and the results thereof were confirmed by vote of a majority of the members present at a meeting of Local Lodge 1028 on November 4. On November 13, Respondent, by letter, advised Ferguson that, as a result of the foregoing proceedings, he had been fined \$60 per day for each of the 23 days on which he worked at the Employer's facility while Respondent was on strike against the Employer.

In the complaint, the General Counsel alleges that Respondent, by fining Ferguson in the manner set forth above, violated Section 8(b)(1)(A) of the Act.⁵ While neither the Charging Party nor Respondent chose to file briefs stating their positions, in his brief the General Counsel contends that the Board's recent decision in *Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115 (Dalmo Victor)*, 263 NLRB 984 (1982), controls our decision in the instant case. We agree with the General Counsel.

In *Dalmo Victor*, Members Fanning and Zimmerman found that "a union rule which limits the right of a union member to resign only to nonstrike peri-

ods constitutes an unreasonable restriction of a member's Section 7 right to resign."⁶ Chairman Van de Water, in his and Member Hunter's concurrence in *Dalmo Victor*, found "any restriction imposed upon a union member's right to resign to be unreasonable." As set forth above, the parties stipulated that Respondent's constitution prohibits resignations during the entire course of a strike or within 14 days preceding its commencement. Therefore, under the view expressed by Members Fanning and Zimmerman in *Dalmo Victor*, and under the view expressed by Chairman Van de Water in *Dalmo Victor*, the union provision at issue here is an unreasonable restriction on resignation. Accordingly, Respondent's attempted enforcement of its constitutional provision violated Section 8(b)(1)(A).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth above, occurring in connection with the Employer's operations, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in, and is engaging in, certain unfair labor practices, we shall order it to cease and desist therefrom. In order to effectuate the purposes of the Act, we shall also order Respondent to rescind the unlawful postresignation fines, and to refund any money paid to it as a result of such fines, with interest. See *Florida Steel Corporation*, 231 NLRB 651 (1977) (see, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962)). We shall also order Respondent to post the notice attached as an appendix to this Decision and Order.

CONCLUSIONS OF LAW

1. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. By imposing fines on former member Robert C. Ferguson, who had duly resigned from the Union, for his postresignation crossing of a sanctioned picket line and working during a strike at

⁴ All events hereinafter occurred in 1980 unless otherwise noted.

⁵ Based on the facts as set forth above, the parties stipulated that no claim is being made that Respondent violated the Act by levying a fine upon Ferguson for working on June 13, but rather that Respondent violated the Act with respect to the fines levied for the 22 days Ferguson worked after he had duly resigned from Respondent.

⁶ Member Fanning views the issue in these cases as the right of an employee to exercise his Sec. 7 right to refrain from collective activity by working during a strike. See *Dalmo Victor*, *supra* at fn. 13. He agrees that the union constitution clause herein prohibiting resignation during a strike is an unreasonable rule.

Gray Motors, Inc., Respondent restrained and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, District Lodge 160, International Association of Machinists and Aerospace Workers, AFL-CIO, and its affiliated Local Lodge 1028, Tacoma, Washington, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Restraining or coercing employees who have resigned from, and are no longer members of, Respondent in the exercise of the rights guaranteed them in Section 7 of the Act by imposing fines on such employees because of their postresignation conduct in working at Gray Motors, Inc., during the strike which began in June 1980.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

(a) Rescind the fines levied against Robert C. Ferguson because of his postresignation work for Gray Motors, Inc., during the strike which began in June 1980, and refund to him any money he may have paid as a result of such fine, plus interest.

(b) Post at its business office and meeting halls copies of the attached notice marked "Appendix."⁷ Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60

consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Mail to the Regional Director for Region 19 signed copies of said notice for posting by Gray Motors, Inc., if the Company is willing, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, after being duly signed by Respondent's authorized representative, shall be returned forthwith to the Regional Director.

(d) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT restrain or coerce employees who have resigned from the Union and who, in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act, as amended, worked after their resignation at Gray Motors, Inc., during the strike which began in June 1980 by imposing fines on them for working during the strike.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL rescind the fines levied against Robert C. Ferguson because he worked at Gray Motors, Inc., after his resignation from the Union during the strike which began in June 1980, and refund any money he may have paid as a result of such fines, plus interest.

DISTRICT LODGE 160, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO,
AND ITS AFFILIATED LOCAL LODGE
1028

⁷ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."